# The Allegheny County Chiefs of Police Association

## ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS AND INTERVIEWS

An Allegheny County Criminal Justice Advisory Board Project

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# In Partnership With

# The Allegheny County District Attorney's Office

# 2024

# ACT 22 RECAP

On July 7, 2017, Act 22 of 2017 was signed into law, amending the Wiretap Act, the Right to Know Law, and the Judicial Code. Act 22 can be found at 18 Pa.C.S. § 67A01 *et seq*., and its effective date is September 5, 2017. Act 22 requires that law enforcement agencies establish written policies for police audio and/or video recordings which shall be public. The scope of Act 22 includes Body Worn Cameras, Mobile Video Recorders, ALPR and Overview cameras and other recordings. Highlights of Act 22 are as follows:

1. Act 22 revises the definition of "Oral Communication" in 18 Pa.C.S. §5702 of the Wiretap Act to specifically exclude communications made in the presence of a law enforcement officer on official duty who is in uniform or otherwise clearly identifiable as a law enforcement officer and who is using an electronic, mechanical, or other device which has been approved as set forth in the Act. Consequently, the following are no longer applicable to police recordings:
   a. The prohibition on recording inside a residence;
   b. The requirement for police to inform of the recording; and
   c. Civil and/or criminal penalties contained within the Wire Tap Act.
2. Requests for police recordings and agency responses will no longer be made pursuant to the Right to Know Law, 65 P.S. §67.101, *et seq*. Any requests for audio/video recordings made by law enforcement officers will now be governed by Act 22. Requests for police recordings must be made in writing and served upon the department's Open Records Officer within (60) days of the recording, stating the date, time, location of the incident and the requestor's relationship to the recording. You should review and revise your audio/video recording retention policies to insure that you have the ability to respond to requests made on the last day. Additionally, you must retain recordings during any appeal periods from denial of requests.
3. An agency may establish reasonable fees relating to the costs incurred to disclose audio/video recordings. The fees shall be paid by the requesting party at the time of disclosure of the recording. There is no right to production of recordings made inside a facility owned or operated by a law enforcement agency or to any communications between or within law enforcement agencies concerning an audio or video recording. An agency may redact recordings in order to protect potential evidence in a criminal matter, information pertaining to an investigation, confidential information or victim information. Audio and video recordings must be redacted when only part of the recording is shielded from disclosure. Recall that in PSP v. Grove, the PA Supreme Court found that partial redaction was required (though this opinion was written based on the "Right to Know Act," just prior to Act 22's enactment).
4. Act 22 allows a police department to enter into a Memorandum of Understanding (MOU) with the District Attorney's Office for the purpose of consultation on the decision of whether or not to release a recording, as well as the District Attorney's assumption of responsibility for the decision to deny a request and defending that decision. Whether or not an MOU is in place, the Act gives the District Attorney the authority to override a department's decision to release audio and/or video recordings pertaining to criminal matters.
5. The status of recordings made in a home without a warrant are still somewhat in question in light of Commonwealth v. Dunnavant, 107 A.3d 29 (Pa. 2014), a case which involved a warrantless recording in a home by a confidential informant. While we believe that it is unlikely that Pennsylvania appellate courts will find a constitutional violation when a police officer who is in uniform or otherwise clearly identifiable as a law enforcement officer records in a home, there are no appellate decisions directly deciding this issue. Out of an abundance of caution, an "initial" notification that the officer is recording upon entry into a home may help negate a suppression challenge

Please understand that this model should serve only as a "**Starting Point**" for those departments who may wish to update their Rules & Regulations Manual in this area. To best serve your department, it should be reviewed and revised by you and your Municipality and Insurance Carrier.

**ACCPA-CJAB-DA**
**MODEL**
**ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS/INTERVIEWS PROCEEDURES**

## 01. PURPOSE

The purpose of this procedure is to provide officers with guidelines for the electronic recording of custodial interrogations and suspect interviews. Changes in law and procedure will give rise to modifications and updates.

## 02. DEFINITIONS

This procedure recognizes the critical distinction between the two investigative practices of interview and interrogation. The recording requirements under this procedure are for custodial interrogations and suspect interviews at the Department. These distinctions notwithstanding, members are encouraged to record at any time in a manner consistent with applicable law, when they feel it will aid in their investigation.

Interview**:** A non-accusatory conversation in which, through questions and answers, the officer tries to develop investigative and behavioral information that will provide pertinent information and may test the veracity of statements made by a suspect, victim, or witness. Interviews may occur in a variety of circumstances and locations.

Interrogation: An accusatory procedure designed to elicit information from the subject. Interrogation includes direct questioning of a subject about a crime or suspected crime, as well as any words, statements, or actions by officers that are reasonably likely to elicit an incriminating response from the subject.

Interested Adult: An adult who is genuinely interested in the welfare of the juvenile suspect. The interested adult must be informed of the juvenile's Fifth and Sixth Amendment rights.

Electronic recording: "Electronic recording" includes motion picture, audiotape, or videotape, or digital recording, or similar capabilities in the making of a record of an interview.

Recap interview: For this procedure, when statements and admissions are initially made outside the presence of electronic recording equipment, officers should offer and if possible, conduct an electronically recorded interview in a recording location to reflect the prior statements of the subject.

## 03. PROCEDURE

### a. Non-Custodial Interrogations/Interviews

1. Interviews of **suspects** conducted at the Station shall be recorded. Audio and video recording shall be activated at the time the suspect enters the room. The suspect shall be notified of the audio and video recording at this time, which is to document the initial gathering of personal information from the suspect. Should the suspect object to the recording of audio, the interviewer shall deactivate the audio recording while continuing to record video. Otherwise, the audio and video recording shall continue until the interview is concluded and the suspect leaves the room.

2. "Miranda Warnings" are not required to be given to a person who is **not** in custody.

3. The test for determining whether a person is being subjected to a custodial interrogation/interview, to require Miranda warnings, is whether he/she is physically deprived of his/her freedom in a significant way or is placed in a situation in which a reasonable person would believe that his/her freedom of action or movement is restricted by such interrogation.

### b. Custodial Interrogations

1. "Miranda Warnings" **are required** and shall be given to a person prior to any custodial interrogation.

2. The test for determining whether a person is being subjected to a custodial interrogation, so as to require Miranda warnings, is whether he/she is physically deprived of his/her freedom of activity in a significant way or is placed in a situation in which a reasonable person would believe that his/her freedom of action or movement is restricted by such interrogation.

3. If a subject waives his/her rights following the Miranda warnings being administered, officers shall document that the waiver was voluntary, knowing, and intelligent, e.g. that the subject knew his/her right to remain silent before answering questions and he/she freely chose to otherwise proceed with the interrogation without exercising that right.

4. This waiver must be explicit but need not be in writing, however, the Department Miranda Warning Form should be utilized to the extent possible.

5. If the subject waives his/her rights after receiving Miranda warnings, officers are free to question him/her.

6. However, if the subject requests counsel at any time during the questioning, all interrogation shall cease immediately. This request for counsel must be unambiguous. A suspect must articulate his/her desire to have counsel present sufficiently clear that a reasonable officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, officers are not required to stop questioning.

7. If a subject exercises his/her rights following the Miranda warnings, all interrogation shall cease immediately. The subject may not again be interrogated unless:

i. The subject's attorney is present; or

ii. The subject initiates new contact with the police. In this latter case, Miranda warnings should again be administered and a second waiver (if applicable) obtained before further questioning. Again, the Department Miranda Warning Form should be used to the extent possible. Officers shall also document and, if possible, obtain written verification that the subject initiated the contact as well as the surrounding circumstances; or

*iii. Break of custody of at least fourteen (14) days. If suspect is in custody awaiting trial or sentencing, there is no break in custody. If the suspect is in custody post-sentencing, he may be subjected to custodial interrogation again after being given Miranda warnings if there has been a break in custodial interrogation of at least fourteen (14) days.

04. **RECORDING REQUIRED**

Members shall make an electronic recording of custodial interrogations.

a. **EXCEPTIONS** to this recording requirement include:

1. A statement made by the accused in open court or at a grand jury proceeding;

2. A statement made during a custodial interrogation that was not recorded as required because electronic recording was not feasible;

3. A spontaneous statement that is not made in response to a question;

4. A statement made after questioning that is routinely asked during the processing of the arrest of the suspect.

5. If a suspect indicates willingness to answer the interrogator's questions, but is not willing to consent to any audio recording of the interrogation, the interrogation may proceed with video recording. The interrogator may attempt to record a statement from the suspect regarding his/her unwillingness to be recorded, but this is not an absolute requirement to proceed. The suspect should be requested to indicate his/her declination to be recorded on the ***Miranda Rights Warning*** **form**.

6. A statement made during a custodial interrogation that is conducted out-of-county.

7. This procedure is not intended to discourage field interviews and interrogations (i.e., on the street, at hospitals, police vehicles, or other locations. Body Worn and Car Cameras can be used when practicable). Members are encouraged to conduct interviews and interrogations at the time when they believe the circumstances are opportune for eliciting information from a subject.

*NOTE:

What does "Break of Custody" mean for police?

Suspect serving his sentence in jail or prison, and you wait at least 14 days, go forth and reconnect.

Suspect in custody awaiting trial or sentencing, you'll have to hope he recontacts you.

https://www.tdcorg.com/article/edwards-presumption-and-shatzer-exception-when-14-days-makes-all-the-difference/

**INFORMATION OBTAINED UNDER ANY OF THE ABOVE EXCEPTIONS AND WHY THE EXCEPTION APPLIES MUST BE DETAILED IN THE SUPPLEMENTAL/INVESTIGATIVE REPORT.**

05. **RECORDING RESPONSIBILITY**

The member assisting with the interrogation shall be responsible for the operation of the recording device used during the interrogation and will monitor the same to ensure that the recording is not interrupted

06. **EQUIPMENT**

New and unused recording media will be used.

07. **PLACE FOR RECORDING**

Recordings should generally be made at the Department facilities. However, nothing in this procedure prohibits recording at other properly equipped locations (Recording device at the Department could be a Body Worn Camera or as simple as a GoPro Camera that was successfully used at 10 different locations for the initial pilot project).

08. **RECORDING DURATION**

To maximize the effectiveness of electronic recording and the integrity of audio-video documentation, members shall adhere to the following:

1. Miranda warnings (Attachment A) must be read to the suspect before any recorded custodial interrogation ensues. The administration of these warnings shall be recorded as part of the original ("master") recording. The entire custodial interrogation, from the suspect's entrance to the room Miranda warning to the conclusion of the interrogation, shall be recorded.

2. In order to maintain the integrity of other investigations and/or to protect confidential information that may bear upon such matters as the safety of witnesses, the interrogating member shall cause the recording equipment to be deactivated immediately upon the exit of all parties from the interview room upon the conclusion of the interrogation session.

3. The entire custodial interrogation, from the Miranda warning to the conclusion of the interrogation, shall be recorded. Any and all reasons for a break in the recording during this period must be memorialized on the recording and on a written form, signed by the interrogator and the subject interrogated, and made when the recording is stopped and restarted.

4. Nothing in this procedure prohibits or limits the use of electronic recording equipment, consistent with this procedure for any interview.

**09. INTERROGATION/INTERVIEW**

1. **CUSTODIAL INTERROGATION/INTERVIEW**: With the audio-video camera on, read the suspect his/her Miranda Rights Warnings and request the form (attachment A) be signed. Also advise the suspect (while pointing to the camera) that "while you are in this room your words and actions are being recorded".

2. **NON-CUSTODIAL INTERROGATION/INTERVIEW:** With the audio-video camera on, advise the suspect (while pointing to the camera) that "while you are in this room your words and actions are being recorded ".

3. **IDENTIFICATION OF PARTIES:** All persons within the interrogation room should be identified on the recording, whether by the interrogating member(s) or by the subject himself.

4. **TIME AUTHENTICATION:** The interrogating member should state the date and time at the onset of the interrogation, and again at the conclusion of the interrogation.

5. **WRITTEN STATEMENTS:** The intent of this procedure is to obtain the most accurate information/evidence possible. Barring electronic recording the member should attempt to obtain a written statement or have the suspect sign and date the investigator's notes.

6. **ATTORNEY CONSULTATIONS:** The recording shall be continuous and uninterrupted during the interrogation process. If the suspect invokes the right to counsel and the attorney elects to confer privately with the subject, the member responsible for the recording shall advise the attorney of the use of recording equipment, and offer to deactivate the audio, or to provide an alternate room for the conference, or to turn off the recording equipment during the conference between the attorney and the subject. If there is an interruption in the recording in order to accommodate the subject and attorney, note the date and time prior to stopping the equipment and again re-state the date and time when the equipment is again turned on.

7. **PARENT/INTERESTED ADULT CONSULTATION:** Once it begins, the recording shall be continuous and uninterrupted during the interrogation process. All interviews of juvenile suspects shall include the consent for the recording from both the juvenile and/or the interested adult, who may be present. A juvenile suspect may be interrogated when he/she waived his/her Miranda rights without the presence of an interested adult as Pennsylvania no longer recognizes a *per se* rule that a juvenile is incompetent to waive Constitutional rights without consultation with an interested adult. However, the absence of the juvenile's right to confer with an interested adult will be viewed as an important factor among the totality of the circumstances for determining whether a waiver is voluntary.

**10. POST INTERROGATION/INTERVIEW**

a. The member(s) conducting the interrogation/interview shall:

1. **PREPARATION OF REPORT**: Complete a Supplemental/Investigative Report, indicating that an electronic recording was made or was not made of a interrogation/interview. The substance of all oral admissions must also be documented on the report from all involved members regardless of whether there was a subsequent recorded and/or written statement.

2. **INTEGRITY OF RECORDINGS**: For those using USB thumb drive (or similar digital media, i.e., external hard drive) to transfer recordings from the DVR, the raw recorded material of the interrogation/interview contained on the USB device shall be utilized to create a read-only CD or DVD disc. This initial recorded CD/DVD disc shall serve as the ORIGINAL EVIDENCE disc. Copies (investigative work copies, copies for the District Attorney's Office for future prosecution, and/or defense discovery copies) of the CD/DVD should be made from the ORIGINAL EVIDENCE disc prior to placing the ORIGINAL EVIDENCE disk into evidence. Investigators shall also confirm that the recorded material was successfully copied to any CD/DVD discs created at this time. All CD/DVD discs shall be labeled according to the Station procedure.

Once the ORIGINAL EVIDENCE and work copy disks have been created and contents verified, the contents of the USB thumb drive shall be deleted and the USB drive placed back into service.

3. **PROTECTION OF ORIGINAL RECORDING:** Recordings made using equipment that creates segmented "chapters" shall be saved in the master file as created. These "chapters" files may then be combined to create one complete recording of the interrogation; however, the original chapters must be preserved as the master file. Copies may be saved in other formats to enable the prosecutor to create shorter segments for presentation, and for other authorized purposes. The master recording will be preserved as the authoritative original in the event a dispute should arise as to authenticity of any copies.

b. **WRITTEN SUPPORT STATEMENT REQUIRED.** As part of the Supplemental/Investigative report members will indicate the interrogation/interview was conducted in compliance with the Stational procedure.

c. **PRESERVATION/REVIEW OF RECORDING**

1. Officers shall not:
   i. Alter the original electronic recording media.
   ii. Copy, convert, record, share or disclose the contents of a recording including posting to any public and/or social media site without written approval of the Chief of Police.
   iii. Remove, dismantle, or tamper with any hardware or software component or part associated with recording equipment.
   iv. Erase, destroy, disseminate, edit, alter, or otherwise use recordings without the written permission of the Chief of Police.
   v. Allow unauthorized personnel
   to view recordings without permission from the Chief of Police (District Attorney employees who are directly involved in the investigation and/or prosecution of a criminal case related to the digital evidence, or who are previously authorized to interact with Department evidence, are exempt from this restriction).
   vi. Delete any recording.
   vii. Download or convert any recording for personal use.

viii. Members seeking to view electronic recordings who are not involved with the case must submit a request to the Chief of Police.
ix. Members seeking to view and/or use electronic recordings for training purposes must submit a request to the Chief of Police for approval.
x. Any electronic recording of any statement made by an accused during a custodial interrogation shall be confidential and exempt from public inspection and copying. The information shall not be transmitted to anyone except as needed to comply with this procedure.

2. Dissemination or release of any recorded media outside of the District Attorney's Office is prohibited unless specifically authorized by the District Attorney or Chief of Police.

3. CHAIN OF CUSTODY: To ensure a proper chain of custody, members will adhere to the Department evidence procedures.

4. RETENTION**:** Every electronic recording made under this practice must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct, post-conviction and federal habeas corpus appeals are exhausted. Electronic recordings shall not be destroyed, unless authorized by the Chief of Police and the District Attorney pursuant to an Order of Court.

d. **MAINTENANCE OF EQUIPMENT**: The Chief's designee will:

1. Be responsible for maintaining the electronic recording equipment and will ensure that there is an adequate supply of recording media at all times.
2. Routinely clean the equipment according to the manufacturer's guidelines.

3. In the event the equipment requires service or repair, notify the Chief of Police promptly.

# DEPARTMENT

# MIRANDA RIGHTS WARNING

PLACE _____

DATE & TIME _____

(1) You have the right to remain silent.

(2) Anything you say can and will be used against you in a court of law.

(3) You have the right to talk to an attorney and have him/her present with you while you are being questioned.

(4) If you cannot afford to hire an attorney, one will be appointed to represent you free of charge before any questioning, if you wish.

(5) You can decide at any time to exercise these rights and not answer any questions or make any statements.

## WAIVER

I am not unduly under the influence of drugs and/or alcohol.

I am making this waiver voluntarily and without threats, pressures, coercion or promises of any kind being made to me.

I understand my rights.

Signature_____

I certify the above statements were read to_____

before he/she was questioned.

Officer _____

Officer _____

**Attachment A**

# AUDIO-VIDEO RECORDING OVERVIEW & CHECKLIST

This recording requirement **does not** extend to any preliminary discussions with the subject before the administration of Miranda warnings and actual interrogation begins.

Advise the suspect (while pointing to the camera) that "while you are in this room your words and actions are being recorded".

If the subject indicates that he/she does not want to be audio recorded, advise the subject that you will turn it off. Turn off the audio portion and continue to video record.

Record the entire **custodial interrogation**, from the Miranda warning to the conclusion of the interrogation.

Any and all reasons for a break in the recording during this period must be memorialized on the recording and in the written report.

Custodial interrogations and confessions must be recorded unless the subject refuses or one of the articulable exceptions applies.

All interviews of suspects at the department shall be recorded from the time the suspect enters the interview room until either the audio is deactivated at the suspect's request or the interview is concluded.

**IF AN ATTORNEY IS PRESENT:** If the suspect invokes the right to counsel and the attorney elects to confer privately with the subject, advise the attorney of the use of recording equipment, and offer: to deactivate the audio, or to provide an alternate room for the conference, or to turn off the recording equipment during the conference between the attorney and the subject. If there is an interruption in the recording in order to accommodate the subject and attorney, note the date and time prior to stopping the equipment and again re-state the date and time when the equipment is again turned on.

**JUVENILE PARENT/INTERESTED ADULT:** All interviews of juvenile suspects shall include the consent for the recording from both the juvenile and the interested adult who is present. A juvenile suspect may be interrogated when he/she waived his/her Miranda rights without the presence of an interested adult as Pennsylvania no longer recognizes a *per se* rule that a juvenile is incompetent to waive Constitutional rights without consultation with an interested adult. However, the absence of the juvenile's right to confer with an interested adult will be viewed as an important factor among the totality of the circumstances for determining whether a waiver is voluntary.

# AUDIO-VIDEO RECORDING
# CHECKLIST

☐ **MIRANDA WARNINGS:** If in custody, give the Miranda warnings and have the subject sign a waiver form (Appendix A).

☐ **AUDIO RECORDING:** Advise the suspect (while pointing to the camera) that "while you are in this room your words and actions are being recorded".

☐ If the subject indicates that he/she does not want to be audio recorded, advise the subject that you will turn it off. Turn off the audio portion and continue to video record.

☐ **IDENTIFICATION OF PARTIES**: Identify all persons within the interrogation room on the recording.

☐ **TIME AUTHENTICATION**: State the **date and time** at the onset of the interrogation, and again at the conclusion of the interrogation.

☐ **DEACTIVATION**: Deactivate the recording equipment immediately upon the exit of all parties from the interview room upon the conclusion of the interrogation session.

☐ **WRITTEN STATEMENTS:** Barring electronic recording, attempt to obtain a written statement or have the suspect sign and date the investigator's notes.

☐ **PREPARATION OF REPORT**: Complete a Supplemental/Investigative Report, indicating that an electronic recording was made or was not made of a custodial interrogation.

☐ **INTEGRITY OF RECORDINGS**: Label all applicable documents and/or recorded media according to the Station procedure.

**Attachment B**